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In The

Supreme Court of the United States

October Term, 1997

DOVE VALLEY BUSINESS PARK ASSOCIATES, LTD., a Colorado Ltd. Partnership; HAVANA STREET, LTD., a Colorado limited partnership and GULLWING ACRES LIMITED LIABILITY CO., a Wyoming limited liability company; and COLORADO NATIONAL BANK, a federally chartered bank, as successor by merger to BANK WESTERN, a federal savings bank,

Petitioners,

v.

THE BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY, COLORADO; and ADRIAN B. "BERNIE" CIAZZA, TREASURER, ARAPAHOE COUNTY, COLORADO,

Respondents.

On Petition For Writ Of Certiorari To The Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does Colorado's statutory scheme mandating that delinquent taxpayers pay a penalty on property tax assessments determined to have been erroneously levied violate the Due Process and Taking Clauses of the United States Constitution, and conflict with applicable, but older, decisions of the United States Supreme Court holding a penalty on erroneously assessed taxes to be unconstitutional?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below are those set forth in the caption to this petition, with one exception. Dove Valley Business Park Associates, Ltd., a Colorado Ltd. Partnership; Havana Street, Ltd., a Colorado limited partnership and Gullwing Acres Limited Liability Co., a Wyoming limited liability company; and Colorado National Bank, a federally chartered bank, as successor by merger to Bank Western, a federal savings bank, are petitioners hereto. The Board of County Commissioners of Arapahoe County, Colorado, and Adrian B. "Bernie" Ciazza, Treasurer, Arapahoe County, Colorado are respondents hereto. In the proceedings below, Abacus Group Realty Holding Company II, a Delaware corporation, as successor by merger to Diversified Land Holdings, Inc., a Delaware corporation, was also a party but has not joined the other petitioners in seeking review by this Court.

RULE 29.6 LISTING

The only corporate filer may be Colorado National Bank, which is really a federally chartered bank. Its parent company is First Bank National Association and, by merger, U.S. Bank National Association, a federally chartered banking association, which itself is a subsidiary of U.S. Bancorp., a federally registered bank holding company.

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PETITION FOR WRIT OF CERTIORARI

Dove Valley Business Park Associates, Ltd., a Colorado limited partnership; Havana Street, Ltd., a Colorado limited partnership and Gullwing Acres Limited Liability Co., a Wyoming limited liability company; and Colorado National Bank, a federally chartered bank, as successor by merger to Bank Western, a federal savings bank, respectfully pray that a writ of certiorari issue to review the judgment of the Colorado Supreme Court entered in this proceeding on September 15, 1997, in order to confirm the continuing force of preexisting United States Supreme Court cases directly addressing the important federal question presented herein, to resolve the conflict between the Colorado Supreme Court and the highest state court of another state addressing the issue, and to prevent the infringement of fundamental constitutional rights.

OPINIONS BELOW

The opinion of the Colorado Supreme Court which gives rise to this petition is printed in Appendix A hereto, and is reported at 945 P.2d 395 (Colo. 1997). The Colorado Supreme Court's order denying petitioners' request for rehearing is attached hereto as Appendix B.

JURISDICTION

The Colorado Supreme Court entered the judgment (Appendix A) for which petitioners seek review on September 15, 1997. It entered its order denying the petition for rehearing on October 20, 1997. Pursuant to Supreme Court Rule 13, this Petition for Writ of Certiorari is timely filed. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257, that a statute of the State of Colorado is drawn into question as repugnant to the Constitution of the United States.

This Petition for Writ of Certiorari draws into question the constitutionality of a Colorado statute. The State of Colorado itself is not a party, but Arapahoe County is. Under Colorado law, Arapahoe County is a political subdivision, an agency, of the State. Nevertheless, in the event that 28 U.S.C. § 2403(b) applies, petitioners have served this Petition for Writ of Certiorari on the Attorney General of Colorado, Honorable Gale A. Norton.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

The Fifth Amendment to the Constitution of the United States of America provides, in pertinent part, that

> "No person shall. . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

The Fourteenth Amendment to the Constitution of the United States, § 1, provides in pertinent part that

> ". . . . No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Statutory Provisions

The statutory provisions involved in this case are Colorado Revised Statutes (C.R.S.) 39-12-103 (imposition of redemption interest); 39-10-114 (abatement and refund procedures); and 39-5-122 and 39-8-109 (protest and adjustment procedures), all as in effect at the relevant times to this case. Because of their length, the relevant portions of these statutes are set forth in Appendix C, attached hereto.

STATEMENT OF THE CASE

Petitioners, separately, are owners of real estate in Arapahoe County, Colorado who did not timely pay their property tax assessments, in substantial part because the property had been greatly overvalued by the County Assessor, in some cases by over 1,000%. As a result, the taxes were sold several months after the due date to third party tax certificate purchasers, or sold to the County itself, at a statutory tax sale. Pursuant to C.R.S. 39-12-103, redemption interest (at a rate during the relevant times of

15-16%) began to accrue from the date of the tax sale on the aggregate of the principal amount of the taxes and accrued delinquent interest and tax sale costs.

To remedy the overassessment, petitioners timely petitioned for an abatement or refund, or adjustment, of their property taxes in accordance with the procedures and time requirements set forth under Colorado law (C.R.S. 39-10-114; and 39-8-109 and 39-5-122). Although the statutory process to contest the accuracy of the tax assessment took at least one and a half years, longer in the case of certain of the petitioners, the taxing authorities eventually agreed the assessments were erroneous, and ordered reductions which collectively (and in some cases separately as well) totaled several million dollars in the valuation of the petitioners' properties, resulting in a reduction in their property taxes which collectively (and in some cases separately as well) amounted to hundreds of thousands of dollars. By way of example, petitioner Dove Valley's 1989 valuation was reduced by a total of $4,828,084.00, from $10,076,590.00 to $5,248,406.00, a reduction of 48%. Reduction of the valuation resulted in a corresponding reduction of the 1989 property taxes by a total of $189,394.43, from $396,119.72 to $206,725.29. The County charged Dove Valley $206,725.29 (the corrected tax), plus interest at 15-16% on $206,725.29 (the corrected tax) *and on $189,394.43* (the erroneous tax), for the 1989 taxes *and for succeeding years* until the assessment was corrected and the taxpayer redeemed. Other petitioners were equally successful in obtaining substantial tax reductions, and were charged like redemption interest penalties thereon.

Thus, petitioners must pay a penalty in the form of redemption interest, not only on the corrected amount of taxes (*petitioners do not challenge these charges*) *but also on the wrongfully assessed taxes, i.e., that amount by which the original taxes were reduced,* in order to redeem their property from the effects of the tax sale. With regard to those parcels which petitioners had redeemed prior to the tax abatement, the County refused to credit the redemption interest penalty it had charged on the erroneous portion of the taxes. This injustice was repeated in succeeding years until the taxing authorities ordered reductions and the petitioners redeemed. The penalty charged by the County on the erroneously assessed taxes amounted to an aggregate of several hundred thousand dollars for all petitioners.

The petitioners each filed suit in December of 1993, setting forth their several claims for a refund or credit of the redemption interest charged on the wrongfully assessed taxes. Plaintiffs asserted in the first claim for relief of their respective complaints that the County's conduct in charging them redemption interest (at a rate of 15 to 16% per annum) on taxes which were illegally or erroneously assessed by the County Assessor is proscribed by the Fifth and the Fourteenth Amendments to the United States Constitution, because it is an impermissible taking of private property without due process and without just compensation. Petitioners also claimed a refund or credit on equitable, and statutory interpretation, grounds, asserting that C.R.S. 39-10-114(1)(b) providing for refund interest in the event of a tax abatement must, in order to meet constitutional mandates, be interpreted to include a refund of interest for the period

during which the County charged redemption interest penalty on the abated amount. The court ordered a consolidation of all cases. After a hearing on petitioner's Motion for Summary Judgment [there were no material issues of fact, the County simply taking the position that it was acting in accordance with a taxing scheme mandating collection of redemption interest on taxes which were not paid by the time of the statutory tax sale, and that redemption interest was to be calculated on the original tax levy, not the corrected tax levy,] the trial court dismissed all of petitioners' claims.

Petitioners appealed the trial court's dismissal of their constitutional claim, as well as their equitable and statutory interpretation claims, to the Colorado Court of Appeals. The Court of Appeals affirmed as to that part of the trial court's order that allowed the County to exact redemption interest, without refund or credit, on the illegal or erroneously assessed taxes until redemption by the taxpayer. It did rule, on statutory interpretation grounds, that the County must refund delinquent interest charged on the erroneously assessed taxes *up to the date of the tax sale*, but this constituted a very small part of the total interest charged by the County on the erroneously assessed taxes for the taxpayer to redeem (delinquent interest is charged at 12% per annum to the date of tax sale, and redemption interest is charged at 15-16% per annum from the date of the tax sale until the date of redemption).

In February of 1996, petitioners petitioned the Colorado Supreme Court for a writ of certiorari to review the opinion of the Colorado Court of Appeals upholding the power of the County to exact redemption interest on the

erroneously assessed taxes. By its Order of September 23, 1996, the Colorado Supreme Court granted review of petitioners' constitutional and equitable claims to a refund or credit of redemption interest, but denied review of their statutory interpretation claim.

On September 20, 1997, the state Supreme Court affirmed the decision of the Court of Appeals on grounds which differed dramatically with the rationale of the Colorado Court of Appeals. The Court of Appeals had held that petitioners' tax abatement was a property interest under state law, and the County's charging of redemption interest on the erroneous portion of the tax assessment constituted a taking of petitioners' property. Nevertheless, the court had held the taking to be constitutionally permissible as a legitimate means of enforcing timely payment of the assessed taxes and assuring a regular stream of income for the County. The Colorado Supreme Court also reasoned that redemption interest furthers the goal of providing a consistent source of income by discouraging taxpayers from allowing their properties to go to a tax lien sale and by encouraging third parties to purchase the tax liens. However, it affirmed on the basis that the redemption interest charged under Colorado's statutory taxing scheme is a legitimate penalty, an additional charge, and can be calculated in any manner the legislature sees fit. It held that the legislature determined the penalty is to be calculated on the amount of taxes paid at the tax sale by the purchaser of the tax lien, rather than on the amount of taxes later determined to have been lawfully owed. Finally, it reasoned that redemption in Colorado is a mere privilege, a gratuity given by the legislature, and so no taking occurred when the County

charged a penalty in the form of redemption interest as required by statute, and a taxpayer has no reasonable expectation based upon state law of being exempt from this penalty.

The decision of the Colorado Supreme Court raises an important issue arising under the United States Constitution, and resolves that issue in a manner entirely inconsistent with existing precedent of the United States Supreme Court dating back to 1886 directly addressing the issue, and which petitioners assert this Court should reaffirm. Further, the decision is contrary to the principles of due process, and the protections from arbitrary governmental takings, set forth in the Fifth and Fourteenth Amendments to the United States Constitution, and articulated by the United States Supreme Court in *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 101 S. Ct. 446, 66 L.Ed.2d 358 (1980), and *Harper v. Virginia Dept. of Taxation*, 113 S. Ct. 2510, 125 L.Ed.2d 74 (1993).

REASONS FOR GRANTING CERTIORARI

The issue presented by this Petition for Writ of Certiorari is a matter of concern not only to Colorado property owners, but potentially to all taxpayers nationwide. The decision of the Colorado Supreme Court allows Colorado counties, when an original tax levy is not timely paid (even when overassessment makes timely payment impossible or impracticable), to exact a penalty on that portion of the taxes which are determined by the taxing authorities themselves to have been erroneously assessed.

This results in such fundamental unfairness to the taxpayer that it should be reviewed by this Court. If Colorado can enact a taxing scheme mandating a penalty be imposed against the taxpayer on taxes the County erroneously assessed, then it opens the gate for other states to raise revenues in this arbitrary manner, not limited to property taxes. Further, as onerous a burden as it is for these petitioners to have to pay this very substantial penalty for taxes it does not owe in order to save their property from the effects of the tax sale, the burden may well be even more onerous to the small business owner or homeowner who may not be able to pay even $1,000 more in penalties on taxes it does not owe.

Petitioners assert that tax collection statutes can only be rationally related to a legitimate governmental interest to the extent they may authorize sanctions for delinquent taxes which have been legally assessed. Where the taxes have been wrongfully assessed and are determined not to be owed, exacting a penalty in the form of redemption interest serves no lawful purpose. The Colorado Supreme Court's decision allows the County to charge an innocent taxpayer redemption interest on money which he does not owe simply to obtain money it cannot keep, because the County must refund or credit the principal amount of the tax abatement. In effect, this allows the County to borrow and use money at the rate for redemption interest and force a few taxpayers to pay that interest on its behalf. This also creates a disincentive for the County to do a diligent job in properly valuing the property in the first instance, since it is the beneficiary of its own over-assessment. Petitioners assert that the concepts of justice and fairness, as set forth in the Due Process and Taking

Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, mandate that the government itself and not the taxpayer pay the interest when the County borrows money in this manner based upon its own erroneous assessment.

I. The Colorado Supreme Court's decision on this important federal question conflicts with established but older precedent of the United States Supreme Court, and the Court should reaffirm this precedent.

The decision of the Colorado Supreme Court runs directly contrary to decisions of the United States Supreme Court in *County of San Bernardino v. Southern Pac. R. Co.*, 118 U.S. 417, 6 S. Ct. 1144, 30 L.Ed. 125 (1886) and *County of Santa Clara v. Southern Pac. R. Co.*, 118 U.S. 394, 6 S. Ct. 1132, 30 L.Ed. 118 (1886). These cases hold that a taxpayer cannot, under any circumstances, be held liable for a penalty for not paying property taxes arising out of an invalid assessment. Under Colorado statute, particularly C.R.S. 39-10-114 and 39-8-109, the tax abatement at issue could only have been made upon a determination that the taxes at issue were illegally or erroneously assessed, i.e., invalid, and therefore, under no circumstances could any penalty lawfully be assessed on the abated portion of the taxes.

As in our case, the *Southern Pacific Railroad* cases involved the imposition by the county of excessively assessed property taxes for several years. As in our case, the taxes were not paid when due, were contested, and an eventual resolution determined that the taxes had been overassessed. Nevertheless, just as in our case, the county

asserted it had a right to charge a penalty against the railroads on the illegally or erroneously assessed tax amount from the due date. The equities are even stronger in our case, inasmuch as Arapahoe County would not allow the petitioners to redeem their property by paying the correct amount of taxes and penalty thereon, and determining any further liability for redemption interest in a later proceeding. In the *Southern Pacific Railroad* cases, Justice Harlan needed little analysis to conclude what seems to these taxpayers to be a matter of fundamental fairness:

> "The plaintiff not, then, being entitled to judgment for the taxes originally in question, and the parties having stipulated that the judgment entered for the plaintiff, with the consent of the defendant, should not be treated as an admission by the latter of the validity of the taxes claimed, it follows that the plaintiff cannot have judgment in its favor for penalty, interest, and attorney's fees. Apart from every other view, *the defendant could not be adjudged liable for penalty, interest, or attorney's fees for not paying taxes arising out of an invalid assessment, and which, under the law, were not collectible by suit. Judgment affirmed."* [*County of San Bernardino*, 118 U.S. at 422, 6 S. Ct. at 1146.] [Emphasis Supplied]
>
> ". . . . It follows that there is no occasion to determine under what circumstances the plaintiffs would be entitled to judgment against a delinquent taxpayer for penalties, interest, or attorney's fees; for, *if the plaintiffs are not entitled to judgment for the taxes arising out of the assessments in question, no liability for penalties,* interest, or attorney's fees could result from a refusal or

> failure to pay such taxes. Judgment affirmed." [*County of Santa Clara*, 118 U.S. at 417, 6 S. Ct. at 1143.] [Emphasis supplied]

Justice Field concurred, stating

> ". . . . of course, no penalties for not paying an illegal tax, and no attorney's fees charged for the attempt to collect them, could be recovered, and for a like reason the interest of 2% a month claimed could not be demanded. . . . " [*County of San Bernardino*, 118 U.S. at 425, 6 S. Ct. at 1148.]

Petitioners have found no more recent United States Supreme Court cases in which the *Southern Pacific Railway* cases have been questioned in any way for the principles cited above. While these decisions are not expressly based on the Fifth and Fourteenth Amendments to the United States Constitution, the concepts of fundamental fairness and justice encompassed by the Due Process and Taking Clauses dictate such a conclusion.

II. The Colorado Supreme Court's decision sustains the validity of a state statutory taxing scheme which violates the Due Process Clause and the Taking Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

Under the protections afforded by the Fifth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment to the Constitution (*Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 122, 98 S. Ct. 2646, 2658, 57 L.Ed.2d 631 (1978)), the government may not take private property for public use

without payment of just compensation. Colorado recognizes that rights acquired by judgment or decree constitute constitutionally protected property interests. *Kirk v. Denver Pub. Co.*, 818 P.2d 262 (Colo. 1991). This includes decisions of an administrative tribunal. 16C CJS, *Constitutional Law*, § 982 and 983. *La Plata River & Cherry Creek Ditch Co. v. Hinderlider*, 25 P.2d 187 (Colo. 1933). Thus, the petitioners' tax abatement awards, recovered through statutorily prescribed administrative channels, are constitutionally protected property interests. The Colorado Court of Appeals recognized this in its decision, though concluding that the taking of this property interest by exacting redemption interest against it was constitutionally permissible because it helped assure a regular flow of income (see Appendix A, pg. App. 6, reference in the Opinion of the Colorado Supreme Court). The Colorado Supreme Court reasoned that since redemption was a legislatively granted gratuity and not a constitutional right, a penalty in the form of redemption interest could be imposed by the legislature even on erroneously assessed taxes, that the taxpayer had no reasonable expectation of paying the penalty only on the corrected tax amount, and thus there was no property interest implicated and no taking.

The Colorado Supreme Court is only partly correct in its statement that redemption is a legislative gratuity which may be restricted. As stated at 85 CJS *Taxation*, § 841, the legislature's authority to impose conditions on the right to redeem is still subject to constitutional protections. Thus, regardless of whether the right of redemption is a mere privilege, the taxpayers' abatement awards were still judgments, property interests under Colorado

law, which could not be taken away without due process or payment of just compensation. The charging of redemption interest on the erroneously assessed taxes diminished the judgment, and was therefore a governmental appropriation of the award.

The Colorado Supreme Court's decision is not reconcilable with this Court's holding in *Webb's Fabulous Pharmacies, Inc. v. Beckwith, supra.* As in our case, *Webb's* involved the state's taking of plaintiffs' money and interest, specifically the constitutionality of a state statute authorizing a county to take the interest accruing in an interpleader fund deposited into the registry of the County Court under circumstances where another statute imposed a fee for the Clerk's services in receiving the fund into the registry. The U.S. Supreme Court rejected the notion that the statute created a valid fee for services and held that the county's retention of the interest fund violated the Taking Clause of the Fifth Amendment. This Court reasoned that the state had not merely adjusted the benefits and burdens of economic life to promote the common good, but had exacted a forced contribution to general governmental revenues not reasonably related to the costs of using the courts. It concluded

> "To put it another way: a State, by *ipse dixit,* may not transform private property into public property without compensation, even for the limited duration of the deposit in court. This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That Clause stands as a shield against the arbitrary use of governmental power." [*Webb's Fabulous Pharmacies,* 449 U.S. at 164, 101 S. Ct. at 452.]

The Colorado Supreme Court's decision, in a very similar manner, allows Arapahoe County to exact a forced contribution to general governmental revenues not reasonably related to the legitimate costs of collecting lawful taxes, because the penalty imposed under the statutory taxing scheme is calculated not only on the corrected tax amount which the taxpayers failed to timely pay, but also on the taxes which were determined to have been erroneously assessed in the first place. Petitioners assert that this is truly an arbitrary use of governmental power, which the Taking Clause of the Fifth Amendment was meant to prevent.

The Colorado Supreme Court acknowledged that constitutional due process, as articulated by the United States Supreme Court in *Harper v. Virginia Dept. of Taxation, supra,* and *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco,* 496 U.S. 18, 110 S. Ct. 2238, 110 L.Ed.2d 17 (1990), requires that taxpayers either have an opportunity to have the legality of the tax assessment determined before having to pay [or face sanctions such as the redemption interest penalty], or, if that opportunity is not provided, that the taxing authorities provide meaningful backward looking relief such as a full refund.

> "The constitutional sufficiency of any remedy thus turns (at least initially) on whether Virginia law 'provides an adequate form of predeprivation process, for example, *by authorizing taxpayers to bring suit to enjoin imposition of a tax prior to its payment, or by allowing taxpayers to withhold payment and then interpose their objections as defenses in a tax enforcement proceeding,*" citing *McKesson.* [*Harper,* at pg. 2520 of 113 S. Ct.] (Emphasis supplied)

The Colorado Supreme Court further recognized that Colorado's property tax collection scheme does not guarantee predeprivation relief in that sanctions and summary remedies were imposed in the form of the redemption interest penalty before the petitioners' objections to the tax's validity could be resolved. Therefore, the Colorado court agreed that meaningful backward looking relief such as a full refund must be provided.

> "On the other hand, if no such predeprivation remedy exists, 'the Due Process Clause of the Fourteenth Amendment obligates the state to provide meaningful backward-looking relief to rectify any unconstitutional deprivation' ". [*Harper*, at pg. 2519 of 113 S. Ct.]

However, the Colorado Supreme Court only gave lip service to this principle, stating that the "full refund" mandated by the Due Process Clause was given in the form of a refund of the principal amount of the abated taxes. The court declined to recognize that the County's collection of the redemption interest penalty on the abated tax amount effectively made the relief provided fall far short of the "full refund" which petitioners assert is constitutionally mandated.

Petitioners assert full refund must of necessity, in order to make these taxpayers whole, include both the abatement of wrongfully assessed taxes *and the redemption interest penalty charged on the wrongfully assessed taxes.* In *Library of Congress v. Shaw*, 478 U.S. 310, 317 n.5, 106 S. Ct. 2957, 2962 n.5, 92 L.Ed.2d 250, 259 n.5 (1986), and *Jacobs v. U.S.*, 290 U.S. 13, 54 S. Ct. 26, 78 L.Ed. 142 (1933), this Court held that the Fifth Amendment requires interest be paid when the government takes private property for

public use when the circumstances require to truly make a taxpayer whole.

> "The amount recoverable was just compensation, not inadequate compensation. The concept of just compensation is comprehensive and includes all elements, 'and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation.' " [*Jacobs*, 290 U.S. at pg. 17]

The United States Supreme Court has thus mandated that the relief provided under the Fifth Amendment's Due Process and Taking Clauses be truly *meaningful*. The petitioners would not have had to pay the redemption interest penalty if the validity of the tax had been determined beforehand. The Due Process and Taking Clauses of the Fifth Amendment stand as a shield from petitioners being denied their tax abatement by the government's exaction of a penalty on taxes which were never lawfully owed in the first place.

III. The Colorado Supreme Court's decision creates conflict between decisions of the highest court of the two states which have directly addressed this important federal question, and the United States Supreme Court should resolve that conflict for the future guidance of all states.

The Alaska Supreme Court recently addressed this same issue in *Cool Homes, Inc. v. Fairbanks*, 860 P.2d 1248 (Alaska 1993). There, just as in our case, the taxpayers did not pay the assessed property taxes when due and eventually obtained a reduction. However, prior to the order reducing the assessment, the taxing entity sought to foreclose its tax lien based on the original assessment, and,

just as in our case, even after the reduction, sought to collect penalties based on the original assessment. Just as in our case, the taxing entity argued that the taxpayer could have paid the taxes originally assessed and then sued for a refund, thereby avoiding penalties as well as foreclosure. The Alaska Supreme Court rejected that argument, holding that the penalties could not possibly be determined until the date of the reassessment because there was no figure on which to base them. It reasoned that there could be no delinquent tax until a "valid" tax is assessed, i.e., a correct tax assessment is made:

> ". . . . it seems appropriate to require an error free assessment before penalties can be imposed." [*Cool Homes* at pg. 876.]

In addition,

> ". . . . the taxpayer's right of redemption was impaired, because the taxpayer could not ascertain what amount it had to pay to avail itself of the right (of redemption)."

Even as to interest not designated as a penalty, the court held that although the accrual date may be the original due date of the taxes, interest could only be charged on "the amount later adjudicated as damages," i.e., the correct tax amount only.

Although there may be some differences in Colorado's statutory taxation scheme from that of Alaska's, the principles set forth by the Alaska Supreme Court are based upon concepts of fundamental fairness, and not on statutory interpretation. These principles should apply just as strongly to the Colorado legislature's enactments and the actions of Arapahoe County. The highest courts

of the states of Colorado and Alaska have addressed this important federal question, and have rendered conflicting decisions. Most of the other states have statutory property tax schemes which impose sanctions for delinquent tax payments. The United States Supreme Court should review petitioners' constitutional claims, to correct Colorado's imposition of unconstitutional penalties and to give guidance to other states.

CONCLUSION

To enforce the decisions of this Court with which the Colorado Supreme Court's decision conflicts on an important matter of federal law, to rectify the violation of the Due Process and Taking Clauses of the United States Constitution which the Colorado Supreme Court's decision authorizes, and to resolve the conflicts between the highest courts of the states which have addressed this important federal question, petitioners respectfully

request this Court grant their Petition for Writ of Certiorari.

Respectfully submitted,

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